

ORIGINAL

In the Matter of:)
United Rigging and Hauling Company)
Beltsville, Maryland)

SDMS DocID 2052748

Docket No. IV-85-19-DC

Proceeding under Section 106(a))
of the Comprehensive Environmental)
Response, Compensation, and)
Liability Act of 1980 (42 U.S.C.)
§ 9606(a)) and Maryland Health)
Environmental Code Section 7-201 et)
seq.)

1. This Consent Order is issued pursuant to (a) the authority vested in the President of the United States of America by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9606(a), as delegated to the Administrator, United States Environmental Protection Agency ("EPA") by Executive Order 12316, 46 Fed. Reg. 42237 (Aug. 14, 1981) and further delegated by the Administrator to the Regional Administrator, EPA Region III, by CERCLA revised delegation 14-14-C (April 16, 1984); and (b) the authority vested in the Secretary of the Department of Health and Mental Hygiene ("DHMH") by Health-Environmental Article § 7-218 through 7-223 of the Annotated Code of Maryland, as delegated to the Director, Waste Management Administration ("WMA").

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JURISDICTION AND CONCLUSIONS OF LAW

2. On the basis of investigations and analyses described in the Findings of Fact set forth below, EPA and DHMH have determined that:

a. United Rigging and Hauling Company ("United") is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Title 7 of the Health-Environmental Article of the Annotated Code of Maryland.

b. Potomac Electric Power Company ("Pepco") is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Title 7 of the Health-Environmental Article of the Annotated Code of Maryland.

c. United owns a property located at 6701 Ammendale Road, Beltsville, Maryland, which is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Title 7 of the Health-Environmental Article of the Annotated Code of Maryland. This property is hereinafter referred to as the "United Site."

d. United is an owner or operator of the United Site within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), and Title 7 of the Health-Environmental Article of the Annotated Code of Maryland.

e. United and Pepco are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and § 7-222(a) of the Health-Environmental Article of the Annotated Code of Maryland and persons responsible for a release or threatened release of a controlled hazardous substance within the meaning of Health-Environmental Article § 7-221 of the Annotated Code of Maryland.

f. On May 8, 1985, at the request of the State of Maryland, EPA conducted a preliminary assessment at the United Site, in accordance with 40 C.F.R. § 300.64.

g. From May 8, 1985, until the present, EPA has been performing emergency removal activities at the United Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, in order to mitigate an immediate and significant risk of harm to the public health and the environment, in accordance with 40 C.F.R. § 300.65(a).

h. The removal activities thus far conducted include sampling of the soil, water, and transformers at the United Site, installation of a temporary barrier around the expected contaminated area, installation of underflow dams at drainage ditches connecting the United Site to an unnamed tributary of the Indian Creek, and the provision of site security.

i. Polychlorinated Biphenyls ("PCBs") found at the United Site are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and controlled hazardous substances within the meaning of Health-Environmental Article §§ 7-201, 7-221 and 7-222 of the Annotated Code of Maryland.

j. The hazardous substances referred to in Paragraph (i) are being released and/or there is a substantial threat of their being released into the environment at the United Site.

k. The actions required by this Order are consistent with the National Oil and Hazardous Substances Contingency Plan ("NCP"), as described in 40 C.F.R. Part 300 and the Maryland State Hazardous Substance Response Plan referred to in Health-Environmental Article § 7-223 of the Annotated Code of Maryland.

3. Pepco and United consent to jurisdiction for the purposes of this Order and the purposes of any subsequent proceedings for the enforcement of this Order, but do not concur in the findings set forth in Subparagraphs 2e, 2f, 2g, 2h, 2i, or 2j. In signing this Order, neither Pepco nor United admits, accepts, or intends to acknowledge any liability or fault with respect to the conditions at or arising from the United Site or in any manner relating to the conditions at or arising from the United Site. This Order does not constitute any determination or adjudication of the proportionate liability or responsibility, if any, of Pepco, United, or any other person or company for response costs or damages of any sort incurred by any party in response to conditions presented at the United Site.

PARTIES

4. This Order shall apply to and be binding upon the following parties, their successors, officers, employees, agents, contractors and consultants:

- a. United Rigging and Hauling Company, a Maryland Corporation ("United");
- b. Potomac Electric Power Company ("Pepco"), a District of Columbia Corporation;
- c. The United States Environmental Protection Agency ("EPA"); and
- d. The State of Maryland Department of Health and Mental Hygiene ("DHMH").

5. United and Pepco are sometimes hereinafter individually referred to individually as a "respondent" or jointly referred to as "respondents."

FINDINGS OF FACT

6. United owns and operates a rigging and hauling business at 6701 Ammendale Road, Beltsville, Prince Georges County, Maryland, hereinafter referred to as the "United Site." The United Site consists of approximately ten acres and is bounded on all sides by industrial facilities. Stormwater runoff from the United Site enters two storm drains and travels via drainage ditches to a local stream. This stream, which is an unnamed tributary to Indian Creek, borders the United Site.

7. United, as part of its rigging and hauling operations, stores and recovers metal from scrap electrical transformers. The United Site presently contains a number of transformers. Sampling of their contents by EPA has indicated that some of these transformers contain mineral oil which contains PCBs.

8. Pepco sold United a number of electrical transformers between 1981 and December 1983. All of these transformers had originally contained mineral oil. Some of the mineral oil in these transformers may have contained PCBs.

9. Sampling by EPA has indicated that PCBs are present in soil at the United Site.

10. Analyses of samples taken by EPA and the State of Maryland from the United Site are detailed in Attachment A. Attachment A also includes maps detailing sampling locations.

11. During dry weather periods, soil particles to which PCBs have attached may become airborne if heavy construction equipment disturbs the soil onsite and generates dust.

12. Certain work ordered hereunder is designed to prevent migration of and potential for exposure to PCBs.

DETERMINATION

13. Based on the Facts stated above and other information, the Regional Administrator of EPA Region III and the Director of the WMA of DHMH have determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment due to the release and/or substantial threat of the release of hazardous substances from the United Site. The Regional Administrator and the Director of the WMA have determined that the actions ordered below are necessary to protect the public health and welfare, and the environment.

WORK TO BE PERFORMED

14. Respondents agree to undertake all actions described in Attachment B to this Order, which is hereby incorporated by reference as if fully set forth herein. The work is to be performed in accordance with the attached Clean-Up Plan (Attachment B), including the Schedule which is incorporated therein, and the schedule shall commence upon the effective date of this Order.

ADDITIONAL AGREEMENTS OF THE PARTIES

15. Notice of Completion: Termination of Order. Respondents shall be subject to the requirements of this Order until all activities required by this Order have been completed. Within twenty-four (24) hours of the completion of the response action described in Attachment B, respondents shall notify the EPA On-Scene Coordinator ("OSC") of such completion and shall furnish the OSC with a report demonstrating that all response actions were performed in accordance with the requirements of this Order. Within ten (10) days of receipt of this report the OSC shall inform

the respondents in writing whether all actions required by this order have been completed. If the OSC concludes that all required actions have not been completed, he shall expressly specify what further actions he believes are required and the respondents shall respond in accordance with Paragraph 19.

16. OSC Authority.

a. In the event that respondents fail or refuse to comply with the requirements of this Order, United shall grant the OSC, his designee, and any EPA employee, contractor, agent, or other authorized representative access to the United Site at all times, to undertake such measures in lieu of the respondents and to take such measures as the OSC determines may be necessary to protect public health, welfare or the environment. By consenting to issuance of this Order, respondents do not admit that any such activities by the OSC or others would be not inconsistent with the National Contingency Plan.

b. In the event that EPA or the DHMH determines that activities that are taking place pursuant to this Order create an imminent and substantial endangerment to the public health, welfare or the environment due to the unsafe working conditions, improper work practices or any changed or unanticipated problems, conditions or events, the OSC may order a halt to site activities being undertaken pursuant to this Order. Either respondent may petition a court of competent jurisdiction for review of any such Order from the OSC. Respondents agree to comply with the provisions of any such Order from the OSC pending the resolution of any such petition. During the period of time that the OSC orders the respondents to suspend implementation of this Order, respondents' obligations pursuant to this Order shall be suspended and the time schedule for implementation shall be extended by a period equal to the length of any such suspension.

c. Nothing in this Order shall be deemed to preclude the OSC from exercising any authority which he may have under the NCP.

17. Site Access

a. EPA, DHMH, and/or any authorized representative of EPA or DHMH shall have the authority to enter and move about all property at the United Site at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts relating to implementation of the program set forth in Attachment B; reviewing the progress of the respondents in carrying out the terms of this Order; conducting such tests as EPA or the project coordinator deem necessary; and verifying the data submitted to EPA and DHMH by the respondents. The respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, pertaining to work undertaken pursuant to this Order. All parties with access to the United Site pursuant to this paragraph shall comply with all approved health and safety plans.

b. United shall provide access to the United Site for purposes of permitting Pepco to comply with the Order. Pepco shall be relieved of any obligation pursuant to this Order which requires access, if after good faith effort, its employees, consultants or contractors are unable to obtain access to the United Site. To the extent that work is to be performed on property not owned or leased by a respondent, both respondents shall be relieved of any obligation pursuant to this Order requiring access if, after good faith effort, they are unable to obtain access to that property.

18. Split Samples. The respondents shall make the results of all sampling and/or tests or other data generated by the respondents, or on the respondents' behalf, with respect to the implementation of this Order, available to the EPA and DHMH. EPA and DHMH will make available to the respondents the results of sampling and/or tests or similar information generated by EPA or DHMH. At the request of EPA or DHMH, the respondents shall split samples collected by the respondents pursuant to implementation of this Order, provided that such request from EPA or DHMH shall not unduly interfere with the schedule set forth in Attachment B. The respondents shall notify EPA and DHMH not less than twenty-four (24) hours in advance of any sample collection activity, or similar testing or movement of drums.

19. Response to Non-Compliance. If during the course of performance of the actions required by this Order, EPA or DHMH determine that either or both of the respondents have failed to comply materially with any provision of this Order, EPA or DHMH shall submit to the respondent(s) a written notice of such non-compliance, which notice shall include the description of the action needed to remedy the non-compliance and a schedule to carryout such action. Respondent(s) shall notify EPA or DHMH, as the case may be, in writing of its/their objections within seven (7) days of receipt of the decision. EPA or DHMH and the respondent(s) will then have an additional seven (7) days from receipt of that notification of objection to reach an agreement. If agreement cannot be reached on any issue within this seven day period, the EPA and DHMH shall provide a written statement of its decision to the respondent(s) and may initiate enforcement action to ensure compliance, or EPA or DHMH may perform the necessary activity and seek to recover damages to which EPA or DHMH may otherwise be entitled as a result of such non-compliance. By execution of this order neither respondent admits the validity of such action nor confesses judgment for any non-compliance or any liability therefor. Any decision by EPA or DHMH under this paragraph shall deemed to be

final agency action.

20. Delay in Performance

a. The parties agree that time is of the essence in completing the work required by this Order. Respondents shall use their best efforts and shall undertake all reasonable measures to ensure that the time requirements set forth in this Order are met. All deadlines for action by respondents established by this Order shall be extended for a period equal to the length of any delay caused by circumstances beyond the reasonable control of Respondents, such as acts of God or war, labor strikes, or other conditions constituting force majeure.

b. Respondents shall promptly notify the EPA and DHMH coordinators appointed pursuant to Paragraph 24 verbally following awareness that such circumstances constituting force majeure have occurred or are likely to occur, and thereafter shall promptly notify EPA and DHMH in writing. Respondent shall describe to EPA and DHMH the circumstances which are beyond their reasonable control, and inform EPA and DHMH of the anticipated length of any delay in compliance. Failure of the Respondents to comply with the notice requirements of this paragraph without good cause shall constitute a waiver of the requirements of this paragraph with regard to the delay with respect to which Respondents fail to give notice. In the event that EPA, DHMH, and the Respondents cannot agree that any delay for which notice is given has been or will be caused by circumstances beyond the reasonable control of Respondents, the dispute shall be resolved in accordance with the procedures set forth in Paragraph 19.

c. Respondents shall not be obliged to undertake any activities under this Order or the Plan incorporated herein which require a permit from any governmental authority until the necessary permit has been issued. Respondents shall make a good faith effort to obtain all such permits in a timely fashion.

d. Respondents shall not be obliged to undertake any activities under this Order or the Plan incorporated herein until after respondents have been provided with governmental sampling results relating to the tasks specified in Attachment B.

21. Covenant Not To Sue. If respondents comply with all of their obligations under this Order, EPA and DHMH covenant not to sue either or both respondents to recover any response costs at, or pertaining to the United Site that have been incurred as of the date this Order is signed by all parties hereto and any costs related to monitoring of compliance by respondents with this Order. EPA further covenants, if respondents comply with all of their obligations under this Order, not to sue either or both respondents to recover any response costs associated with studies and analyses which EPA has agreed to undertake, with regard to Areas C and G, as identified in Attachment B, but this covenant does not extend to the costs of any cleanup which may be necessary in those areas. Nothing in this Consent Order shall preclude or be deemed to preclude EPA or DHMH from exercising any powers, duties or responsibilities vested in them or delegated to them under applicable laws and regulations, the NCP, or the Maryland State Hazardous Substance Response Plan, including but not limited to: (1) except as otherwise provided in the first two sentences in this paragraph, seeking to recover from either or both respondents the following costs that are incurred after the date this Consent Order is signed by all parties hereto: costs associated with response actions, releases or threats of releases of hazardous substances, or controlled hazardous substances, or the cleanup of the pollution problems at or pertaining to the United Site; (2) seeking to recover penalties, in appropriate proceedings, for any alleged violations of any pertinent statutes, regulations, or orders; and (3) seeking to require either or both respondents or any other responsible parties to take further action(s) to address any soil

or water pollution problems relating to the United Site if the source or the effect of said problems was not known to EPA or DHMH as of the effective date of this Order. However, neither the existence of this Order nor any portion of this Order shall be admissible against either respondent in any proceeding to recover penalties, except as necessary for the purpose of enforcement of this Order, as specified in this Order.

22. Stipulated Penalties. For each week that respondents fail to comply with any obligation of this Order not excused pursuant to the previous paragraphs, respondents shall pay the sums set forth below as stipulated penalties. Half of said sums shall be payable to the U.S. Treasury and half to the Maryland Hazardous Substance Control Fund. Checks payable to the United States should be addressed to:

United States Environmental Protection Agency
Regional Hearing Clerk
Region III
Post Office Box 360515 M
Pittsburgh, Pennsylvania 15251

Checks payable to the Maryland Hazardous Substance Control Fund should be addressed to:

Mr. Jack Kerns
Waste Management Administration
201 West Preston Street
Baltimore, Maryland 21201

Stipulated penalties shall accrue in the amount of \$1,000 for the first week and \$2,000 for each week thereafter for failure to comply with the schedule required by this Order, except as excused under Paragraphs 16b, 17b, 19 or 20. EPA and DHMH agree that all penalties for violations of the obligations set forth by this Order shall be limited in the amounts calculated by this paragraph.

23. Expenditures Not Penalties. Except for penalties paid in accordance with Paragraph 22, no payment or expenditure undertaken by any respondent to comply with this Order shall be a penalty.

24. Designated Project Coordinators. On or before the effective date of this Order, EPA, DHMH, and the respondents, shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Order. The EPA Project Coordinator will be EPA's designated representative at the site. EPA, DHMH, and the respondents each shall have the right to change their respective Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five calendar days prior to the change. The EPA designated "On-Scene Coordinator", who may be the EPA Project Coordinator, shall have the authority vested in the On-Scene Coordinator by the National Contingency Plan, 40 C.F.R. Part 300 et seq., 47 Federal Register 31180 (July 16, 1982). The absence of the EPA Project Coordinator from the site shall not be cause for the stoppage of work. To the maximum extent possible, communications between the respondent and EPA and the State and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the Project Coordinators. Further, to the maximum extent possible, EPA and DHMH Project Coordinators on the one hand, and the respondent's Project Coordinators on the other hand, shall coordinate their comments, approvals, reports and other communications and correspondence. For the purpose of verifying that soils containing PCBs which exceed "background" levels have been removed in accordance with attachment B, a representative shall be designated by EPA and DHMH who shall be responsible for communicating with officials of EPA and DHMH and transmitting the verification, if appropriate, and any comments to Respondents.

25. Notification. The respondents shall notify both DHMH and EPA immediately upon discovering or encountering any unanticipated conditions or unidentified materials that may relate to or have an impact upon the cleanup of or pollution problems at or pertaining to the United Site, including but not limited to any drums, and shall obtain the prior permission of DHMH and EPA before handling, removing, or distributing such materials or conditions.

26. Effective Date. This Order shall become effective upon the first date all parties identified below have executed this Order and subsequent notice of such execution have been provided to coordinators appointed pursuant to Paragraph 23.

DATED: 8/2/85

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: [Signature]

JAMES M. SEIF
REGIONAL ADMINISTRATOR
REGION III

DATED: _____

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BY: [Signature]

RONALD NELSON
~~ADMINISTRATOR~~ Director

DATED: July 30, 1985

UNITED RIGGING AND HAULING, INC.

BY: [Signature]

CHARLES E. SLOAN, PRESIDENT
UNITED RIGGING AND HAULING

DATED: July 29, 1985

POTOMAC ELECTRIC POWER COMPANY

BY:

David W. Masters

POTOMAC ELECTRIC POWER COMPANY

David W. Masters

Vice President - Electric Systems

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